

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 10, 2010

Ref. No: GLS-5142

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

HAWAII

Rescind Prior Board Action of May 12, 2006, Item D-6, Consent to Assignment of General Lease No. S-5142, Cynthia Lee Kuahuia Baeza to Larry Patrick Kuahuia.

BACKGROUND:

At its meeting of May 12, 2006, Agenda Item D-6, the Board of Land and Natural Resources approved the Consent to Assignment of General Lease No. S-5142, from Cynthia Lee Kuahuia Baeza to Larry Patrick Kuahuia. See Exhibit A attached.

For reasons unknown, since the Land Board approved the consent to assignment, Mr. Kuahuia experienced problems in obtaining the various documents required to finalize processing of the consent. Staff sent follow-up letters to Mr. Kuahuia to inquire on the status of the required liability insurance and County Tax Clearance. Mr. Kuahuia indicated he was continuing his efforts to obtain the required documents.

REMARKS:

On February 16, 2010, staff received a letter from Cynthia Baeza requesting the cancellation of the assignment of General Lease No. S-5142 to Mr. Kuahuia. Ms. Baeza explained that Mr. Kuahuia died on May 6, 2009. Staff obtained a copy of his obituary published in the May 18, 2009 edition of the West Hawaii Today. Staff has been in communication with Mr. Kuahuia's widow, Angela Kuahuia, and understands that no probate has been opened for his estate. As a result, staff is unable to complete processing of the consent to assignment of lease.

Ms. Baeza recently advised staff of another problem with the assignment of the lease. When she and Mr. Kuahuia initially applied for consent to the assignment, she did not advise staff of the existence of a mortgage on the property in favor of First Hawaiian Bank (FHB). The mortgage, which was recorded in 1990 in the Bureau of Conveyances of the State of Hawaii as Document Nos. 90-155571 and 90-155572, received prior

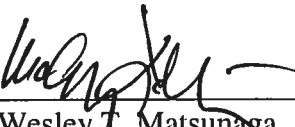
Chairperson approval as required by General Lease No. S-5142. For reasons unknown, neither the Hawaii District files nor the central files for Land Division contained copies of the mortgage or consent, although there was correspondence in the district file from 1990 referencing consents to mortgage for the subject lease and 21 other leases in the area. Ms. Baeza provided copies of the mortgage and consent to documents to staff. A copy of the consent to mortgage is attached hereto as Exhibit B.


Had staff been aware of the FHB mortgage, staff would not have recommended that the Board consent to the assignment of the lease without FHB's consent. Because FHB was not notified of the assignment, no approvals or arrangements were made for an assumption of mortgage by Mr. Kuahuia. To rectify this situation, staff now recommends that the Board rescind its action of May 12, 2006, Item D-6, approving the assignment of the lease from Ms. Baeza to Mr. Kuahuia.

RECOMMENDATION: That the Board:

1. Rescind the prior Board action of May 12, 2006, under agenda item D-6.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent 

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson 

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 12, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Ref. No.: GLS-5142

HAWAII

Consent to Assign General Lease No. S-5142, Cynthia Lee Kuahuia Baeza,
Assignor, to Larry Patrick Kuahuia, Assignee, Milolii-Hoopuloa, South Kona,
Hawaii, Tax Map Key: 3rd/ 8-9-14: 28

APPLICANT:

Cynthia Lee Kuahuia Baeza, as Assignor, to Larry Patrick Kuahuia, husband of Angela M.
Kuahuia, Tenant in Severalty, whose business and mailing address is ~
Honaunau, Hawaii 96726, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION AND AREA:

Portion of Government lands of Lot 15, Milolii-Hoopuloa Houselots, Phase II, situated at
Milolii-Hoopuloa, South Kona, Hawaii, identified by Tax Map Key: 3rd/ 8-9-14: 28,
consisting of approximately .2296 acres, as shown on the attached map labeled Exhibit A.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Residential purposes.

TERM OF LEASE:

65-years, commencing on December 31, 1986 and expiring on December 30, 2051. First
rental reopening is scheduled for December 31, 2011.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

May 12, 2006

D-6

EXHIBIT A

BLNR-Consent to Assignment
Of General Lease No. S-5142
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ANNUAL RENTAL:

\$132.00. Due in semi-annual installments of \$66.00, on the First day of January and June, of each and every year.

CONSIDERATION:

Gratis

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

DCCA VERIFICATION:

ASSIGNOR:

Not applicable, Assignor is an individual and is not required to register with DCCA.

ASSIGNEE:

Not applicable, Assignee is an individual and is not required to register with DCCA.

REMARKS:

Pursuant to Act 62, Session Laws of Hawaii 1982, as amended by Act 83, Session Laws of Hawaii 1984, authorizing the Department of Land and Natural Resources to negotiate and enter into long term leases to persons residing in Milolii who were dispossessed or displaced as a result of the 1926 volcanic eruption of Mauna Loa on the Island of Hawaii. Act 362, Session Laws of Hawaii 1987; as amended by Act 68, Session Laws of Hawaii 1989, and Act 86, Session Laws of Hawaii 1991, extended the sunset date to January 1, 1989, providing sufficient time to process Phase III of the Milolii-Hoopulua Lots.

At its meeting of June 22, 1984, and December 28, 1984, the Board under agenda Item H-2 and F-3, as amended, respectively, authorized the disposition of direct negotiation of residential leases at Milolii.

On April 1, 2005, Mrs. Cynthia Lee Kuahuia Baeza visited the Hawaii District Land Office to submit her request for consent to assignment of General Lease No. S-4962, to her brother, Larry Patrick Kuahuia, Assignee. Reason for the assignment is that Cynthia Baeza's immediate plans are to relocate out of Milolii, and as such, would no longer meet the conditions of the lease.

Coincidentally, insurance companies licensed to do business in Hawaii, are no longer offering liability insurance coverage to the Milolii residents, particularly if the State of Hawaii is to be named as "Additional Insured." As a result, Lessee is unable to acquire the required liability coverage and her Certificate of Liability Insurance policy has since lapsed on February 9, 2006. Aware of the difficulties the Milolii residents face in acquiring the

EXHIBIT A

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necessary insurances, staff is in the process of amending the lease to momentarily place a hold on the need for Lessees to acquire liability coverage from only those companies licensed to do business in Hawaii and of a need to have the State of Hawaii named as an additional insured.

Staff reviewed the file and can report that for the past two (2) years, Lessee had no notices of default. Liability insurance has lapsed on February 9, 2006; as such policies are no longer available to the Milolii residents. Performance bond is not required. The Lessee has never been cited for any other illegal or unlawful activity on the State property.

Larry Patrick Kuahuia has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

First rental reopening is scheduled for December 31, 2011. There is no outstanding rental reopening issues.

On December 16, 2005, the Milolii Screening Committee reviewed and confirmed that Larry Patrick Kuahuia is a qualified applicant for a Milolii Residential Lease.

RECOMMENDATION:

That the Board consent to the assignment of General Lease No. S-5142 from Cynthia Lee Kuahuia Baeza, as Assignor, to Larry Patrick Kuahuia, as Assignee, subject to the following:

1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:

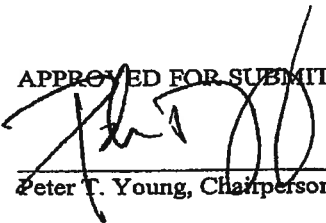

Peter T. Young, Chairperson

EXHIBIT A

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Of General Lease No. S-5142
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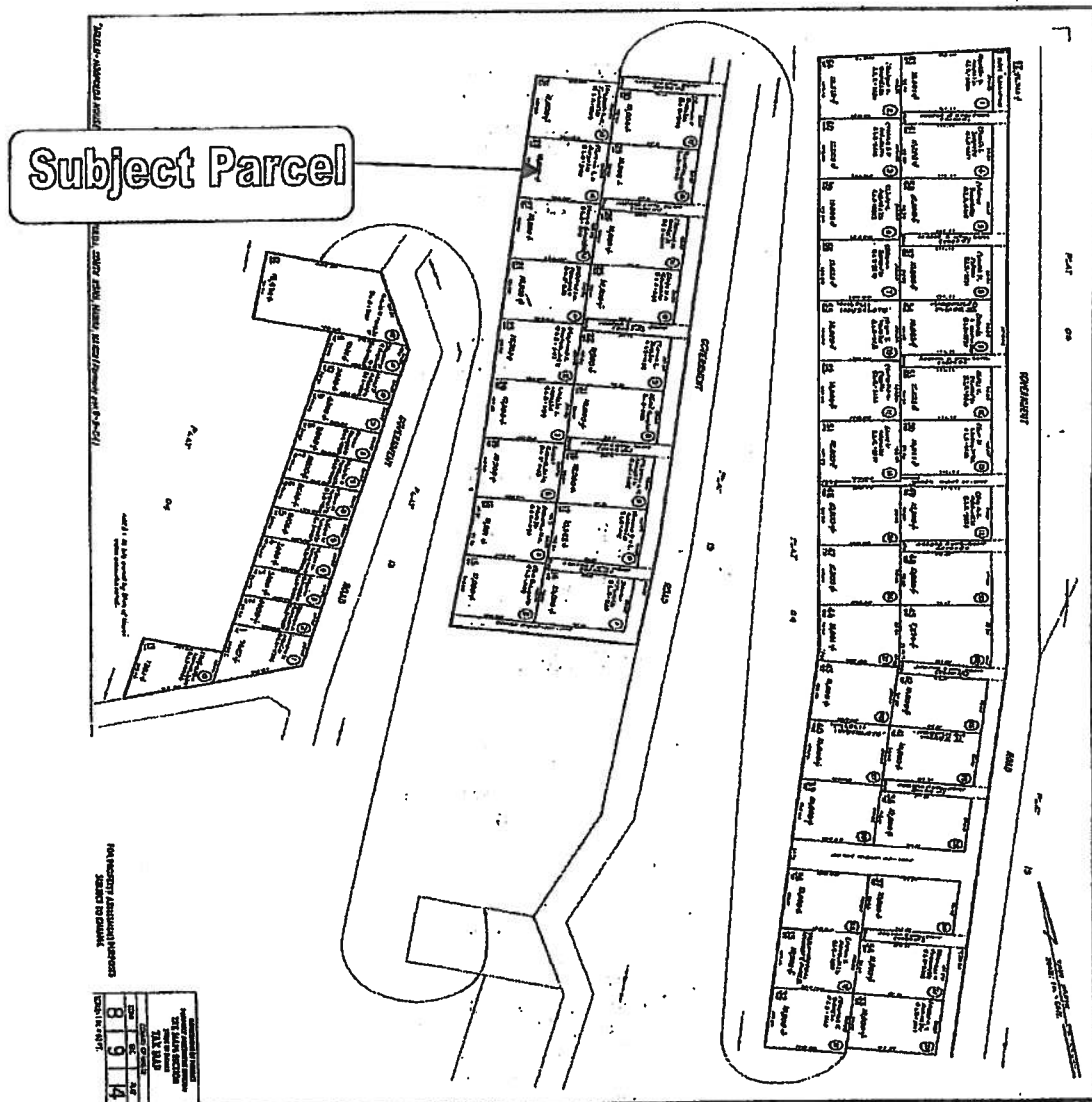


EXHIBIT A

EXHIBIT A

CONSENT TO (MORTGAGE OF GENERAL LEASE) S-5142

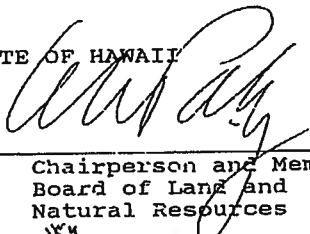
CONSENT is hereby given by the STATE OF HAWAII, by the Chairperson of the Board of Land and Natural Resources, acting pursuant to Section 171-22, Hawaii Revised Statutes, as amended, Lessor under General Lease No. S-5142 dated December 31, 1986, to the attached Mortgage dated September 28, 1989, by and between CYNTHIA LEE KUAHUIA BAEZA, as Mortgagor and FIRST HAWAIIAN BANK, a Hawaii corporation, as Mortgagee, and to any foreclosure and sale thereunder of the Lessee's interest, its successors and assigns, in and to General Lease No. S-5142; SUBJECT, HOWEVER, to the provisions of Section 171-21, Hawaii Revised Statutes, as amended, relating to rights of holder of security interest.

IT IS UNDERSTOOD that, except as provided herein, should there be any conflict between the terms of General Lease No. S-5142 and the terms of the mortgage dated September 28, 1989, the former shall control; and, FURTHER, that except as provided herein this Consent shall not waive any of the terms, covenants and conditions of the general lease and, also, that no further mortgage of General Lease No. S-5142 shall be made without the written consent of the Chairperson of the Board of Land and Natural Resources being first obtained and endorsed thereon.

IN WITNESS WHEREOF, the STATE OF HAWAII, by the Chairperson of the Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this 21st day of February, 1990.

STATE OF HAWAII

By


Chairperson and Member
Board of Land and
Natural Resources

WY

APPROVED AS TO FORM:


Deputy Attorney General

Dated: February 8, 1990

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF LAND MANAGEMENT
P. O. BOX 621
HONOLULU, HAWAII 96809

EXHIBIT B